

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 57330 / February 14, 2008**

**ACCOUNTING AND AUDITING ENFORCEMENT**

**Release No. 2784 / February 14, 2008**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-12955**

<b>In the Matter of</b>	:	<b>ORDER INSTITUTING CEASE-AND-</b>
	:	<b>DESIST PROCEEDINGS, MAKING</b>
<b>AXM PHARMA, INC.</b>	:	<b>FINDINGS, AND IMPOSING A</b>
	:	<b>CEASE-AND-DESIST ORDER</b>
<b>Respondent.</b>	:	<b>PURSUANT TO SECTION 21C OF</b>
	:	<b>THE SECURITIES EXCHANGE ACT</b>
	:	<b>OF 1934</b>
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**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against AXM Pharma, Inc. ("AXM" or "Respondent").

**II.**

In anticipation of the institution of these proceedings Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

**III.**

On the basis of this Order and Respondent's Offer, the Commission finds that:

## **SUMMARY**

This case involves a financial reporting fraud at AXM Pharma, Inc. (“AXM”) during its second quarter of 2005 (the quarter ended June 30, 2005). Specifically, AXM, through its management, improperly recognized approximately \$2.8 million in revenues on a series of sales to a distributor in Asia. These sales, on their face, clearly failed to meet several of the fundamental criteria for revenue recognition under Generally Accepted Accounting Principles (“GAAP”). As a result of the inclusion of this improperly recognized revenue, AXM reported revenues of over \$3.2 million for the quarter, overstating its revenue by over 970 percent, and reported net income for the quarter of approximately \$179,000, instead of a net loss of approximately \$1.46 million.

## **RESPONDENT**

1. AXM Pharma, Inc. is a Nevada corporation with principal executive offices in City of Industry, California. Its main operations are in the People’s Republic of China. AXM, through a wholly owned subsidiary in the People’s Republic of China, is a manufacturer of pharmaceutical and nutraceutical products. At all relevant times, AXM’s common stock was registered with the Commission pursuant to Sections 12(b) of the Exchange Act and was listed on the American Stock Exchange (“AMEX”) under the symbol “AXJ.” The AMEX delisted AXM in June 2006, and its common stock is currently quoted on the Pink Sheets.

## **BACKGROUND**

2. Prior to the quarter ended June 30, 2005, AXM’s primary business operations consisted of producing and selling pharmaceutical products in the People’s Republic of China. In 2002, AXM shut down its existing factory and began construction on a new factory. Consequently, without a production facility, from 2002 through the quarter ended March 31, 2005, AXM’s revenues had declined virtually to the point of nonexistence.

3. In January 2004, to generate revenue while its factory was out of operation, AXM obtained a license to sell certain Sunkist-branded vitamin products. These products were to be produced by third parties in the United States and sold in Asia via a distributor.

4. Between March and May 2005, AXM entered into distribution agreements with three subsidiaries of a Hong Kong-based company (the “Asian Distributor”) to sell the Sunkist products in Hong Kong, Taiwan, and Shanghai. Each of the agreements provided for payment to AXM after the Asian Distributor sold the goods to its customers, and specified that the transfer of title occurred upon delivery to the Asian Distributor’s warehouse. The agreements also gave the Asian Distributor a right of return for expired and other goods.

5. Pursuant to these agreements, from March through June 2005, AXM received purchase orders from the Asian Distributor for Sunkist products totaling \$2.8 million. AXM recognized revenue for the full amount of these purchase orders on its financial statements for the quarter ended June 30, 2005.





